



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 20 2004

OFFICE OF
CIVIL RIGHTS

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RETURN RECEIPT REQUESTED

In Reply Refer To:
EPA File No: 03R-04-R2

Erin M. Crotty, Commissioner
New York State Department
of Environmental Conservation
625 Broadway
Albany, New York 12233-1011

Re: PARTIAL ACCEPTANCE/PARTIAL REJECTION

Dear Commissioner Crotty:

This is in response to the administrative complaint dated April 9, 2004, that the Public Interest Law Firm (PILF) filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on behalf of the Partnership for Onondaga Creek (POC) concerning the Midland Avenue Regional Treatment Facility (RTF) in Syracuse, New York. The complaint alleges that the Onondaga County Department of Water Environment Protection (County) and the New York State Department of Environmental Conservation (NYSDEC) violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI, 40 C.F.R. Part 7.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). A complaint should meet the jurisdictional requirements described in EPA's Title VI regulations. First, it must be in writing. Second, it must describe alleged discriminatory acts that may violate EPA's Title VI regulations. Third, it must be timely filed. Under EPA's Title VI regulations a complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, because EPA Title VI regulations only apply to applicants for and recipients of EPA financial assistance, it must identify an applicant for or recipient of EPA assistance that allegedly committed a discriminatory act.

For the reasons described below, OCR is accepting the complaint in part and rejecting the complaint in part. The complaint is in writing. It also describes alleged discriminatory acts that may violate EPA's Title VI regulations. Further, it describes alleged discriminatory acts by recipients of EPA financial assistance. The timeliness of each allegation contained in the complaint is discussed below.

The complaint makes the following allegations:

1. The County and the NYSDEC have engaged in a continuing pattern of discriminatory conduct related to the failure to provide adequate and meaningful public participation opportunities to the predominately African-American residents of the Midland Avenue community regarding the Midland Avenue RTF.
2. The County proposal, and the NYSDEC approval, of the construction and operation of the Midland Avenue RTF will have adverse disparate impacts upon the predominately African-American residents of the Midland Avenue community.

Allegation # 1 is rejected as untimely with respect to both the County and NYSDEC. When a complaint alleges a continuing pattern of discrimination, the 180-day jurisdictional window begins to run from the most recent alleged discriminatory act. The April 9, 2004, complaint described a series of events related to the alleged failure to provide adequate and meaningful public participation, but did not describe an alleged discriminatory act by either the County or the NYSDEC that occurred within 180 days of the date you filed the complaint with OCR.

In response to OCR's July 14, 2004, request for clarification, the POC identified an alleged discriminatory act taken by the County within 180 days of the filing of the complaint. Specifically, the POC alleged that in a March 15, 2004, letter the County refused to provide a member of the public with information about the proposed or planned alignment for conveyance pipes. While the March 15, 2004, letter stated that no final alignment had yet been selected, the County also stated in that letter that they intend to identify one or more possible alignments for intensive investigation and evaluation. Since the County explained it did not yet have the information requested by the POC, the March 15, 2004, letter does not constitute another alleged incident of failure to provide adequate and meaningful public participation. The previous dates provided in support of the continuing pattern of discrimination allegation all occurred beyond 180 days before the filing of this complaint, therefore, allegation #1 is untimely with respect to the County.

The POC's reply to OCR's July 14, 2004, request for clarification about timely acts committed by the NYSDEC did not provide any additional information. Therefore, allegation #1 is also untimely with respect to NYSDEC.

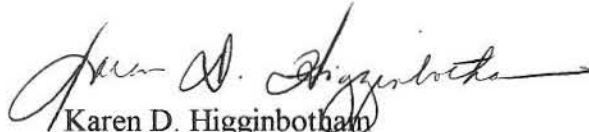
Allegation # 2 is accepted for investigation with respect to both the County and NYSDEC. Based on the information before OCR, a complex series of events related to this project began in the 1980s, however this allegation only became ripe for review when, on December 19, 2003, NYSDEC approved the Midland Avenue RTF and Conveyances Facility Plan. The Complaint was filed on April 14, 2004, within 180 days of the Plan's approval and is therefore timely.

Due to the complex facts of this case, please be advised that this acceptance is conditioned upon our subsequent investigation, consistent with OCR's investigatory authority. Complexities associated with the timeliness issue and the potentially preclusive effect of EPA's Environmental Assessment and judicial litigation regarding the Midland Avenue RTF may warrant reconsideration.

OCR will discuss, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process and the involvement of affected stakeholders.

If you have any questions, please contact Yasmin Yorker, Assistant Director of the OCR External Compliance Program, at (202) 343-9682, by e-mail at yorker.yasmin@epamail.epa.gov, or by mail to the U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,


Karen D. Higginbotham
Director

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